

xii. periodically transferring the funds aggregated in the account from the service provider account to the government authority.

REMARKS

Reconsideration of this Application is respectfully requested. Claims 10-14 are amended, without prejudice or disclaimer. Claims 1-16 are in this case.

Initially, the Examiner rejected claims 10-14 under 35 U.S.C. § 112, second paragraph, for indefiniteness. More specifically, the Examiner takes the position that while claims 10-14 claim an apparatus in the preamble, the body of the claims recite no elements of an apparatus. The Examiner notes, in this connection, that a system is interpreted as an apparatus. Rather, the Examiner continues, only software modules or services are claimed.

The Examiner then rejected claims 10-14 under 35 U.S.C. § 101 on grounds that the claimed invention is directed to non-statutory subject matter. According to the Examiner, claims 10-14 recite only disembodied software modules or services which, he says, are *per se* non-statutory.

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In response to the Examiner's rejections under § 101 and § 112, second paragraph, Applicants have amended independent claims 10-14 to delineate a - - device having modular...programming - - rather than a mere "system" or "module". Also, claims 11 and 14 have been amended to clarify that "reporting/auditing" means - - reporting and/or auditing - -.

Withdrawal of the Examiner's rejections under §§ 101 and 112 is, therefore, respectfully requested.

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Next, the Examiner rejected claims 1-5 under 35 U.S.C. § 103(a) as anticipated by Johnson et al., U.S. Patent Application Publication No. US-2002/0052792. In particular, the Examiner argues that Johnson et al. (e.g., paragraph [0110]) show a first server comprising a merchant server and at least a second and a third server, in turn, comprising tax service servers. Also, the Examiner states, Johnson et al. teach a communication infrastructure linking the merchant and tax service servers. He admits that Johnson et al. do not expressly disclose a fourth, a fifth, a sixth and a seventh server, but asserts that it is notoriously old and well known in the art to spread a functionality among any number of servers. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to use the additional servers in order to reduce the individual load on each server. He comments that the servers are capable of performing all steps of the recited intended use.

Thereafter, the Examiner rejected claims 6-14 under 35 U.S.C. § 103(a) as unpatentable over Johnson et al., as applied to claim 1 above, and further in view of Allon et al., U.S. Patent No. 5,539,883, and the Taxware website. More specifically, the Examiner takes the position that Johnson et al. teach, in addition to the elements noted above, an applications module, a database module, a tax remittance module, a security module (allegedly providing for submission of data via a secure site), and a continuous accessibility module comprising software supporting the broadband connection. Johnson et al. further disclose, says the Examiner, a system backup and recovery module, and a

system monitoring module, on grounds that Johnson et al. use Windows which purportedly has these capabilities. However, he acknowledges that Johnson et al. do not explicitly show a load balancing module, a tax computation module, or software modules handling XML data. The Examiner then looks to Allon et al. as showing load balancing and scalability software. He concludes that it would have been obvious to one of ordinary skill in the art to modify the apparatus of Johnson et al. by using a load balancing module in order to keep part of the system from overloading.

In addition, the Examiner looks to the Taxware website for allegedly teaching a tax module. Accordingly, the Examiner concludes that it would have been obvious to one of ordinary skill in the art to further modify the apparatus of Johnson et al. by providing a tax computation module to minimize the software the user must have.

As for sending messages in XML, the Examiner indicates that it is notoriously old and well known in the art to do so. He concludes that it would have been obvious to one of ordinary skill in the art to further modify the method of Johnson et al. in this way in order to provide for flexible and adaptive information identification.

Regarding claims 8 and 9, the Examiner explains that, as previously noted, functionality can be distributed in any way among any number of servers. He argues that the system of Johnson et al. further shows a server determining when a transaction request has been made. As for claims 10-14, the Examiner notes that all recited modules are shown, as discussed above.

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Finally, the Examiner rejected claims 15 and 16 under 35 U.S.C. § 103(a) as anticipated by Johnson et al. in view of Golden et al., U.S. Patent No. 5,774,872, and

further in view of the Taxware website. According to the Examiner, Johnson et al. inherently show subscribing a subscriber to the network, the Examiner reasoning that because subscribers exist, they must have been subscribed (citing, e.g., FIG. 4). The Examiner continues, Johnson et al. also teaches the steps of installing software on the subscriber system for enabling communications (referencing, e.g., paragraph [0056]); sending a transaction request from the subscriber to the service provider identifying class of goods, value, subscriber identification (purportedly since this information must be sent in order to prepare the proper returns), and the shipping location (noting, for instance, paragraph [0074]); sending a transaction request from the service provider to the tax computation module; sending a reply to the subscriber system; displaying on the subscriber system the tax due and amount of the transaction; accepting the transaction (the Examiner suggesting that Johnson et al. contemplate the system for use with mail order as well as ecommerce); sending a second message from the subscriber system for activating a reporting and remitting module, comprising the transaction confirmation; and periodically generating a tax return based on the amount owed and reporting it to the tax authority.

The Examiner admits that Johnson et al. do not show that the messages are XML; that the transaction request contains the subscriber location, time of message or date; calculating taxes and sending the tax amount and total; transferring funds to a service provider account and transferring from that account to the taxing authority. He then looks to Golden et al. which, he says, disclose transferring funds to a service provider account and from there to a taxing authority periodically.

The Examiner concludes that it would have been obvious to one of ordinary skill in the art to modify the method of Johnson et al., as purportedly taught by Golden et al., in order to ensure payment of taxes. The Examiner also determines that Taxware shows sending subscriber location, calculating taxes due for each transaction, and transmitting a message to the system with calculated tax and total amount. He then concludes that it would have been obvious to one of ordinary skill in the art to further modify the method of Johnson et al. by calculating and transmitting the tax amount in order to more reduce the software required by the subscriber.

As for sending messages in XML and annotating them with time and date, the Examiner finds that such is notoriously old and well known in the art. He concludes that it would have been obvious to one of ordinary skill to further modify the method of Johnson et al. in this way to provide for flexible and adaptive information identification and to provide for tracking activity.

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Applicants, however, respectfully disagree with the Examiner's reading and application of the cited references.

Unlike Johnson et al., Applicants' invention is a tax computation and reporting system that automatically and intelligently identifies and monitors taxable transactions, accurately calculates in real-time the taxes due on the transaction, extracts any taxable transactions which require human intervention, e.g., sales and/or use tax for payments and accruals, and remits those remaining sales and/or use tax payments to government authorities that do not otherwise need human intervention. In addition, and also contrary to the teachings of Johnson et al., Applicants' tax computation operations are performed

by an enhanced software system for calculating sales and/or use tax for payments and accruals, e.g., T-Square, which is found nowhere in the cited references.

Johnson et al. describe a system for sales tax assessment, remittance and collection, i.e., for generating tax reports and submitting payments. In rejecting Applicants' claims 1-5, the Examiner states that (i) it is "notoriously old and well known in the art to spread functionality among any number of servers", that (ii) "[i]t would have been obvious...to use the additional servers in order to reduce the individual load on each server", and that (iii) "...the servers are capable of performing all steps of the recited intended use."

Although Johnson et al. state further, in paragraph [0110], that its purported invention "preferably resides on a number of redundant relational databases", we respectfully submit that such is not tantamount to Applicants' invention. Rather, we submit, each of Applicants' servers performs a different function and is not equipped to carry out each and every operation of Applicants' overall system, otherwise inherent limitations of hardware processing speed and capacity would render such a system unable to carry out its intended real-time function, nor could it handle the vast bulk of information necessary. Conversely, it is not considered practicable to extend the functions of Applicants' system which utilizes one or more servers for each system operation to a series of identical, redundant servers, each hosting all operations of the overall system, e.g., while Applicants' Web server hosts e-content for a user, a different server is preferably utilized to parse data so it may be recognized and used by another server. Applicants respectfully note that redundancy indicated in their claims, between their sixth and seventh servers and their fourth and fifth servers, respectively, is directed to

commonality of at least one application, rather than the respective application of the servers as a whole. It also relates to the server pairs indicated rather than all of the servers of the system, as a whole.

While the Examiner states that it is “notoriously old and well known in the art” to send messages in XML, Applicants respectfully state that they are not merely “sending messages in XML”, but are doing much more, including parsing the data received for XML-based data, interpreting the XML-based data for selected data processing operations, processing XML-based data, and receiving XML-based transactional data. As Applicants’ claims require much more than merely “sending messages in XML”, we submit, it simply would not have been obvious to so modify the method of Johnson et al. in order to provide flexible and adaptive information identification.

Moreover, Johnson et al. neither disclose nor do they suggest a modular architecture for a tax computation and reporting system. Regarding Applicants’ system backup and recovery module and their system monitoring module, although the Examiner asserts that such is inherent in Johnson et al., citing that Microsoft Windows software has these capabilities, Applicants respectfully disagree. While Windows may provide such functions generally, such are not “modular” but rather are embedded in Window’s single operating system platform for each server on which that operating system has been installed.

In addition, Applicants respectfully state that they can find no disclosure or suggestion in Allon et al. as to application of its purported network load balancing operations to a sales tax assessment, remittance and collection system, as set forth by Johnson et al., nor is there any indication in Allon et al. that such a problem exists in the

art of sales tax assessment or vice versa. Accordingly, combination of the teachings of Allon et al. with those of Johnson et al., or vice versa, we respectfully submit, is considered a mere hindsight combination of elements.

Golden et al. relates to an automated taxable transaction reporting/collection system that includes a network of individual point of sale terminals disposed at each of a plurality of remote vendor locations. Golden et al., however, does not disclose or suggest application of a point of sale network comprising redundant servers to a sales tax assessment, remittance and collection system, as set forth by Johnson et al., nor does it identify problems that could warrant application of the teachings of Allon et al. to Johnson et al. Even if there was such suggestion, Applicants disagree that such combination would disclose all of the features of Applicants' invention, as set forth above, such as computation of sales and/or use tax for payments and accruals.

As for the Taxware Web site, there is similarly no disclosure or suggestion of problems in Allon et al., Golden et al. or Johnson et al. that would or could warrant combination and integration of the teachings of the Taxware Web site with those of Allon et al., Golden et al. and/or Johnson et al.

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Accordingly, we respectfully submit that neither Johnson et al., Allon et al., Golden et al. nor the Taxware website, whether taken alone or in any combination, obviate, disclose or suggest Applicants' invention, as claimed. Withdrawal of the Examiner's rejections are, therefore, respectfully requested.

Applicants have made a good faith attempt to place this Application in condition for allowance. Favorable action is requested. If there is any further point requiring atten-

tion prior to allowance, the Examiner is asked to contact Applicants' counsel at (646) 265-1468.

Please charge any additional fees that may be required to Deposit Account No. 08-2025.

Respectfully submitted,

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